

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: USA COMMERCIAL MORTGAGE ) AUGUST 4, 2006  
COMPANY, ) E-Filed: 09/04/06  
 )  
Debtor. ) Case No.  
 ) BK-S-06-10725-LBR  
 ) Chapter 11

PARTIAL TRANSCRIPT OF PROCEEDINGS  
OF  
JUDGE'S RULING  
ON

MOTION TO TEMPORARILY HOLD FUNDS  
PENDING A DETERMINATION OF THE PROPER RECIPIENTS,  
AND MEMORANDUM OF POINTS AND AUTHORITIES, NO. 173

AND

MOTION FOR RELIEF FROM STAY, NO. 208

AND

MOTION TO COMPEL DEBTOR TO CONTINUE  
TO FORWARD LENDER PAYMENTS TO DIRECT LENDERS,  
AND MOTION TO DELAY OR PROHIBIT APPRAISALS  
ON PERFORMING LOANS, NO. 215

AND

APPLICATION TO EMPLOY SIERRA CONSULTING GROUP, LLC,  
AS FINANCIAL ADVISORS

TO THE OFFICIAL UNSECURED CREDITORS COMMITTEE  
FOR USA COMMERCIAL MORTGAGE COMPANY

PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014(A)  
FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE, NO. 878

AND

MOTION DIRECTING PAYMENTS TO DIRECT LENDERS, NO. 336

AND

MOTION TO USE CASH COLLATERAL THROUGH JULY 29, 2006,  
PURSUANT TO SECOND REVISED BUDGET, NO. 407

AND

APPLICATION FOR ADMINISTRATIVE ORDER  
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION  
AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS, NO. 570

AND

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recording;  
transcript prepared by transcription service.

Ex "A"

MOTION FOR ORDER APPROVING CONTINUED USE OF CASH  
THROUGH OCTOBER 29, 2006,  
PURSUANT TO THIRD REVISED BUDGET, NO. 846

AND

MOTION TO DISTRIBUTE FUNDS  
AND TO GRANT ORDINARY-COURSE RELEASES  
AND DISTRIBUTE PROCEEDS, NO. 847

AND

MOTION FOR RELIEF FROM STAY, NO. 863  
VOLUME 1

BEFORE THE HONORABLE LINDA B. RIEGLE  
UNITED STATES BANKRUPTCY JUDGE

Friday, August 4, 2006

9:30 a.m.

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

CLINE TRANSCRIPTION SERVICES (702) 644-1123

Ex "A"

1 APPEARANCES:

2 For the Debtor:

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Ray, Quinney & Nebeker, P.C.  
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LENARD E. SCHWARTZER, ESQ.  
Schwartzter & McPherson Law Firm  
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Suite 1  
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3 For the Official  
4 Committee of Equity  
5 Security Holders  
6 of USA Capital  
7 First Trust Deed Fund,  
8 LLC:

CANDACE C. CARLYON, ESQ.  
Shea & Carlyon, Ltd.  
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Suite 200  
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9 For the Official  
10 Committee of Executory  
11 Contract Holders of  
12 USA Commercial  
13 Mortgage Company:

GERALD M. GORDON, ESQ.  
GREGORY E. GARMAN, ESQ.  
Gordon & Silver, Ltd.  
3960 Howard Hughes Parkway  
Ninth Floor  
Las Vegas, Nevada 89109

14 For Highland Capital  
15 (phonetic):

CICI CUNNINGHAM, ESQ.  
Rawlings, Olson, Cannon, Gormley  
& Desruisseaux  
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Las Vegas, Nevada 89129

16 For Diversified Trust  
17 Deed Fund Committee:

MARC A. LEVINSON, ESQ.  
Orrick, Harrington & Sutcliffe  
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18 JEFFERY D. HERMANN, ESQ.  
19 Orrick, Harrington & Sutcliffe  
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21 Suite 3200  
22 Los Angeles, California 90017

23 BOB L. OLSON, ESQ.  
24 Beckley Singleton, Chtd.  
25 530 Las Vegas Boulevard South  
Las Vegas, Nevada 89101

Ex "A"

1 APPEARANCES (Cont):

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3 Direct Lenders:

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4 Reno, Nevada 89501

5 For the Alexanders  
6 and Others and In  
7 Association with  
8 Nancy Allf, Esq.:

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9 Creditors Committee  
10 of USA Commercial  
11 Mortgage Company:

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11 For the Group of Direct  
12 Investors from  
13 Santa Barbara:

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14 For Dr. Gary L. Kantor  
15 and Various Affiliates:

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McGuire Woods, LLP  
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Suite 4100  
Chicago, Illinois 60601

17 For the First Trust  
18 Deed Committee:

FRANK A. MEROLA, ESQ.  
CHRISTINE M. PAJAK, ESQ.  
Stutman, Treister & Glatt, P.C.  
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Twelfth Floor  
Los Angeles, California 90067

20 For the Direct Lender,  
21 Norman Kiven:

MARK E. KONRAD, ESQ.  
Snell & Wilmer, LLP  
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Tucson, Arizona 85701

23 For Standard Property  
24 Development, LLC:

LEE D. MACKSON, ESQ.  
Shutts & Bowen, LLP  
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25 Miami, Florida 33131

Ex "A"

1 APPEARANCES (Cont.):

2 For the Canepa LAUREL E. DAVIS, ESQ.  
3 Group: Lionel, Sawyer & Collins  
4 300 South Fourth Street  
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Las Vegas, Nevada 89101

5 For the United States AUGUST B. LANDIS, ESQ.  
6 Trustee: Office of the United States Trustee  
300 Las Vegas Boulevard South  
Suite 4300  
7 Las Vegas, Nevada 89101

8 For the McKnight THOMAS J. GILLOON, ESQ.  
9 2000 Family Trust Law Offices Richard McKnight, P.C.  
and Richard McKnight, 330 South Third Street  
Esq.: Suite 900  
10 Las Vegas, Nevada 89101

11 For the (Unknown): ERVEN T. NELSON, ESQ.  
12 Nelson & Associates  
10091 Park Run Drive  
Suite 200  
13 Las Vegas, Nevada 89145

1 (Court previously convened at 09:39:35 a.m.)

2 (Partial transcript of Judge's ruling at 12:14:30 p.m.)

3 THE COURT: Thank you.

4 I'm going to grant the motion with one minor change,  
5 and I'll explain my reasoning for all of this. With respect  
6 to the loans that are paid off, I'd authorize the debtor to  
7 hold back an additional two percent while you investigate  
8 whether or not you were entitled to more.

9 It seems to be on the loans that are paid off you  
10 aren't going to -- you'll have a harder time. You may have  
11 a harder time doing adjustments later if it turns out that  
12 the estate was entitled to that. Again, it's to be held,  
13 not to be spent, but held pending that determination.

14 I won't require the same thing vis-a-vis the ongoing  
15 payments on the loan because those adjustments could be made  
16 later.

17 Now, let me go through my analysis here, and let me  
18 make some things clear. Not everybody who invested money  
19 either as a direct lender or with one of the funds is going  
20 to receive a check, and that's because we can only  
21 distribute those moneys that came in on account of loans  
22 that are now paying.

23 Now, the reason that the one fund will get money is  
24 because they have a loan which is -- they have loaner loans  
25 which are performing, and that's the basis, and then under

1 their agreements that goes out to the members.

2 The other fund has no performing loans at this stage,  
3 and so, therefore, there is no funds available to go to  
4 their investors. As much as we would all like to change  
that reality, we can't at this stage or, perhaps, ever.

Now, let's go through the analysis as to why these  
moneys should be distributed as opposed to waiting. First  
of all, at least, it appears as if at this stage that people  
had direct interest in loans and were actual beneficiaries  
10 on loans and deeds of trust secured by deeds of trust which  
11 were governed by a servicing agreement.

12 Hence, under the servicing agreement to the extent the  
13 money came in, they're entitled to be paid those funds out  
14 absent a servicing fee. So absent bankruptcy, that's what  
15 would happen.

16 Now, are there questions about whether or not those  
17 funds shouldn't be turned over? Yes. There are legitimate  
18 questions.

19 There are legitimate questions which may arise as to is  
20 it truly the lender's money or did it become the estate  
21 money because of commingling and all those other legal  
22 issues or are there other equitable legal reasons for which,  
23 ultimately, these cases all of the money should be put in a  
24 pot and shared?

25 But at this stage, it appears as if there is no basis

for putting the money in an entire pot and sharing it. Each person has their rights under loans and deed of trust; hence, the money should be distributed.

Now, what, though, about the rights to net? I think it's appropriate at this stage to net without making a final legal determination. Under the doctrine, I believe recoupment is applicable.

10 I understand recoupment applies to a single  
11 transaction, but here notwithstanding the fact there may  
12 have been four -- an individual may have had several loans  
13 the point was they got one statement, the money was in one  
14 account, and everybody sort of treated it as sort of this  
15 flowing thing.

16 So I think the Doctrine of Recoupment at least as a  
17 preliminary stage if I were to view this much like a  
18 preliminary injunction weighing the evidence would allow for  
19 the Doctrine of Netting, and, again, the money's being held  
20 back. It's not being applied.

21 The next issue is that Mr. Levinson argues that you  
22 shouldn't distribute these moneys. Well, he claims he said  
23 you shouldn't distribute it, but he really is hedging.

24 He doesn't want to be the subject of being running out  
25 of town on a rail. He says that it should be limited to  
distribution.

And even though I've given him a hard time, he's doing



1 a good job representing his clients who like everybody else  
2 was defrauded in this scheme, and his people are left with  
3 nothing.

4 But as much as we would all like to see the I guess  
5 arguably inequitable concept, the concepts that he argues it  
6 seems to me are concepts which require attachment,  
7 et cetera, in an adversary proceeding. It's unlike  
8 recoupment.

9 And I apologize for those of you who are not attorneys  
10 with these legal doctrines what's very important because as  
11 much as again we would all like to see everybody get  
12 something, perhaps, from one standpoint the point is as some  
13 others argued it's my money, I'm entitled to it, and there's  
14 no legal basis for it, and so we have to apply the legal and  
15 factual basis.

16 So weighing those two things, I think it's appropriate  
17 to distribute the funds, but it's also appropriate to net at  
18 least until we can get a little better sense of what we're  
19 ultimately going to have to do.

20 Netting makes a lot more sense, too, again as between  
21 the direct lenders. Now, we're not talking about the  
22 relationships between the funds and Commercial Mortgage.

23 We're talking about as between the direct lenders.  
24 Netting makes much more sense because, otherwise, the  
25 argument is that you'd have to sue.

That is an incredibly-expensive, frustrating, and  
unnecessary I think legal position. I'm not making a final  
determination, but you can certainly guess which my thinking  
is on that.

I've explained why I think it's appropriate to hold  
additional moneys off for servicing because under the  
contract the debtor was entitled to servicing fees, and I  
think it's better to hold back what you're entitled to and  
especially on the paid-off loans.

And, again, on the loans that payments are still going,  
there's enough room for a setoff later if it turns out the  
estate is entitled to those fees.

And, quite frankly, as much as we talk about we need to  
get the moneys to the lenders, the professionals in this  
case have worked very hard, and, unfortunately, they can't  
do it for free.

And in order to keep this whole thing going and to get  
back what we've got, we've had to have the professionals, so  
the servicing fees are moneys that the investors were never  
entitled to.

The servicing fees you agreed in the beginning that USA  
Commercial would get X percent, and that was the agreement,  
and that's all we're enforcing is that USA Commercial will  
get the amount to which they were entitled to be paid under  
the servicing agreement, and it's better to sort that out

Ex "A"

1 later.

2 As to Mr. Landis' argument, to the extent that this  
3 is -- I think this is appropriate to make these interim  
4 distributions because at this stage it does not appear to be  
5 property of the estate, and, therefore, no plan is required.

6 (Court concluded at 12:21:50 p.m.)  
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2 I certify that the foregoing is a correct transcript  
3 from the electronic sound recording of the proceedings in  
the above-entitled matter.

/s/ Lisa L. Cline

09/04/06

Lisa L. Cline, Transcriptionist

Date

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Ex "A"

E-FILED ON AUGUST 30, 2006

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**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

**Jointly Administered Under  
 Case No. BK-S-06-10725 LBR**

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

**STATUS AND AGENDA FOR  
 AUGUST 31, 2006 HEARINGS**

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Date: August 31, 2006  
 Time: 9:30 a.m.

Ex "B"

1. **Motion For Relief From The Automatic Stay To Terminate Loan Servicing Agreement For Direct Loan To Boise/Gowan, LLC** (Affects USA Commercial Mortgage) filed by Laurel Davis on behalf of Scott K. Canepa (the "Boise/Gowan Lift Stay Motion"). The Boise/Gowan Lift Stay Motion has been continued to this date and seeks relief from the automatic stay to change the loan servicing agent and terminate the Loan Servicing Agreement as to the Boise/Gowan loan.

Opposition Filed By:	Date	Docket No.
USA Commercial Mortgage	June 2, 2006	468
Donna Cangelosi	June 5, 2006	503
Official Committee of Unsecured Creditors of USA Commercial Mortgage (Omnibus Response)	June 9, 2006	566
Scott K. Canepa (Reply)	June 13, 2006	632
Boise/Gowan LLC (Declaration in Opposition)	July 24, 2006	961
Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (Joinder in Opposition)	July 28, 2006	1037

2. **Debtors' Motion To Distribute Funds And To Grant Ordinary-Course Releases And Distribute Proceeds (Affects USA Commercial Mortgage, USA Capital Diversified Trust Deed Fund, And USA Capital First Trust Deed Fund)** (the "Distribute Funds Motion") filed by Debtors. In this Motion, the moving Debtors request an order authorizing USA Commercial Mortgage Company ("USA") to distribute certain funds held in USA's collection account to direct lenders, and authorizing USA Capital Diversified Trust Deed Fund, LLC and USA Capital First Trust Deed Fund, LLC to further distribute certain funds to their respective fund members. USA seeks permission to distribute promptly to Direct Lenders a substantial portion of the funds currently held in the Collection Account. A **Debtor's Modification to Motion to Distribute Funds And To Grant Ordinary-Course Releases And**

1 **Distribute Proceeds** was filed on August 29, 2006 (See, Docket No. 1203). An Order (A)  
 2 Granting (i) Debtors' Motion To Distribute Funds; (ii) Debtors' Hold Funds Motion And (B)  
 3 Denying (i) The Lift Stay motion And (ii) McKnight Motion (Affects USA Commercial  
 4 Mortgage, USA Capital Diversified Trust Deed Fund, And USA Capital First Trust Deed Fund,  
 5 was entered on August 24, 2006.

6	Opposition Filed By:	Date	Docket No.
7	Stanley Alexander, et al. (Partial Opposition)	July 19, 2006	905
8	Boise Gowan (Response)	July 21, 2006	936
9	Kantor Group (Limited Objection)	July 27, 2006	985
10	JV Direct Lenders (Partial Opposition)	July 27, 2006	986
11	Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (Limited Opposition)	July 27, 2006	987
12	Prospect High Income Fund	July 27, 2006	991
13	Official Committee of Unsecured Creditors for USA Commercial Mortgage (Response)	July 27, 2006	995
14	Norman Kiven (Response)	July 27, 2006	999
15	Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (Response)	July 27, 2006	1000
16	Mantas Group (Joinder in Alexander Opposition)	July 27, 2006	1001
17	U.S. Trustee (Limited Opposition)	July 27, 2006	1005
18	Official Committee of Holders of Executory Contract Rights through USA Commercial Mortgage Company	July 28, 2006	1042
19	Canepa Group (Joinder in Limited Opposition)	July 28, 2006	1044

1	Official Committee of Equity Security Holders of USA	August 2, 2006	1084
2	Capital First Trust Deed Fund, LLC		
3	(Omnibus Reply to Responses)		
4	Official Committee of Equity Security Holders of USA	August 2, 2006	1088
5	Capital Diversified Trust Deed Fund, LLC		
6	(Motion to Strike First Trust Deed Fund's Sur-Reply)		
7	McKnight 2000 Family Trust and Richard McKnight SEP- IRA	August 3, 2006	1100
8			
9	<b><u>Reply Filed By:</u></b>	<b><u>Date</u></b>	<b><u>Docket No.</u></b>
10	Debtors	August 2, 2006	1090
11	(Declaration of Thomas J. Allison In Support of Motions To Be Heard On August 4, 2006)		
12			
13	Debtors	August 2, 2006	1092

14

15 **3. Motion For Order Approving Continued Use Of Cash Through October 29,**

16 **2006 Pursuant To Second Revised Budget (Affects All Debtors)** (the "Continued Cash

17 Motion") filed by Debtors. The Continued Cash Motion requests that the Court enter an order

18 approving the Debtors' continued use of cash through the week ending October 29, 2006. An

19 order granting this Motion has been circulated among counsel and will be lodged with the Court.

20	<b><u>Opposition Filed By:</u></b>	<b><u>Date</u></b>	<b><u>Docket No.</u></b>
21	Official Committee of Equity Security Holders of USA	July 27, 2006	988
22	Capital Diversified Trust Deed Fund, LLC		
23	and		
24	Official Committee of Equity Security Holders of USA		
25	Capital First Trust Deed Fund, LLC		
26	(JOINT OPPOSITION)		
27	Official Committee of Unsecured Creditors for USA	July 27, 2006	992
28	Commercial Mortgage (LIMITED OPPOSITION)		

Ex "B"



1	Official Committee of Holders of Executory Contract Rights through USA Commercial Mortgage Company	July 27, 2006	997
2			
3	<b><u>Reply Filed By:</u></b>	<b><u>Date</u></b>	<b><u>Docket No.</u></b>
4	Debtors	August 2, 2006	1090
5	(Declaration of Thomas J. Allison In Support of Motions To Be Heard On August 4, 2006)		
6			
7	Debtors	August 2, 2006	1091
8			

9           4.       **Motion For Payment of Proceeds of Notes Secured By Deeds of Trust Without**  
10 **Reduction For Netting** (the "Payment of Proceeds Motion") filed by Nancy Allf on behalf of  
11 Florence Alexander, Stanley Alexander, Stanley Alexander Trust, Charma Block, Jerome Block,  
12 Mark R. Campbell, Church of the Movement of Spiritual Inner Awareness, James Cielen, James  
13 R. Cielen, IRA, Patrick Davis, Susan Davis, Norma Deull, James Dickinson, First Savings Bank,  
14 Custodian For Patrick Davis IRA, Nancy Golden, Robin B. Graham, Graham Family Trust Dated  
15 10/26/78, Jayem Family Ltd Partnership, Sharon Juno, Jeff Karr, Phyllis Karr, Martin Leaf,  
16 Pamela Marton, Marilyn Molitch, Molitch 97 Trust, Matthew Moltich, Mark Olds, Sally Olds,  
17 Frances Phillips, Stephen Phillips, Phillips Family Trust Dated October 24, 2989, Hans J. Prakelt,  
18 Crosbie B. Ronning, Grable L. Ronning, Spectrum Capital, LLC, Carole Talan, The Bosworth  
19 1988 Family Trust, The Wild Water Limited Partnership, Claudia Voss, Wolf Voss, Voss Family  
20 Trust, Richard Williams. The Payment of Proceeds Motion requests that the Court enter an order  
21 that Debtor pay distributions to Movants as called for in the Servicing Agreement without  
22 reduction for netting.

23	<b><u>Opposition Filed By:</u></b>	<b><u>Date</u></b>	<b><u>Docket No.</u></b>
24	Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC	August 16, 2006	1160
25			
26	The Kantor Group	August 18, 2006	1162
27	Debtors	August 18, 2006	1168
28	(Response)		

Official Committee of Unsecured Creditors for USA Commercial Mortgage	August 28, 2006	1186
<b><u>Reply Filed By:</u></b>	<b><u>Date</u></b>	<b><u>Docket No.</u></b>
Stanley Alexander, et al.	August 28, 2006	1196

5. **Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC To Misfiled Claims (Affects Debtor USA Capital First Trust Deed Fund, LLC And Claimants Melanie Cowan, Ross Deller, Brenda Falvai, Frieda Moon, Edward J. And Darlene A. Quinn, And Sharon C. Van Ert)** (the "Claim Objection") filed by Shlomo S. Sherman on behalf of Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC. The USA Capital First Trust Deed Fund, LLC Committee objects to the proofs of claim referenced in the Claim Objection on the grounds that they have been erroneously filed against USA Capital First Trust Deed Fund, LLC.

Opposition Filed By:	Date	Docket No.
n/a		

6. **Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC To Claims Based on Prepetition Equity Security Interests of USA Capital First Trust Deed Fund, LLC (Affects Debtor USA Capital First Trust Deed Fund, LLC And Claimants Concetta Carnicelli, Joseph Grgurich; Frieda Moon, Louie and Charlotte Polanco, Rocco J. Rocco, Margaret Valli, Sharon C. Van Ert, And Heinrich Richard And Brigitte S. Weber)** (the "Claim Objection") filed by Shlomo S. Sherman on behalf of Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC. The USA Capital First Trust Deed Fund, LLC Committee objects to the proofs of claim referenced in the Claim Objection on the grounds that they do not reflect "claims" against USA Capital First Trust Deed Fund, LLC as that term is defined in Bankruptcy Code section 101(5).

Opposition Filed By:	Date	Docket No.
n/a		

EX "B"

7. **Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC To Proof of Claim Filed By Prospect High Income Funds, ML CBOIV (CAYMAN) Ltd, Pamco Cayman, Ltd., Pam Capital Funding, L.P., Highland Crusader Fund, Ltd., And PCMG Trading Partners XXIII, L.P. (Affects Debtor USA Capital First Trust Deed Fund, LLC)** (the "Claim Objection") filed by Shlomo S.

Sherman on behalf of Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC. The USA Capital First Trust Deed Fund, LLC Committee objects to and seeks disallowance of claim number 16 on the grounds that the claim is based on a lawsuit against USA Capital Diversified Trust Deed Fund, LLC and that, accordingly, the FTDF has no liability on account of such claim. A Stipulation and Order Continuing Hearing on Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LL to Proof of Claim Filed by Prospect High Income Fund, ML CBOIV was entered on August 29, 2006 rescheduling this hearing to October 30, 2006 at 9:30 a.m.

8. **Scheduling Conference re Complaint**, in adversary 06-1146 LBR., USA Commercial Mortgage Company v. Wells Fargo Bank, N.A., and James Feeney.

9. **Objection To Stipulated Order Extending The Debtors' Exclusive Period To File A Plan To August 31, 20006** filed by Robert C. LePome.

DATED: August 30, 2006

/s/ Jeanette E. McPherson

Lenard E. Schwartzer, Nevada Bar No. 0399  
Jeanette E. McPherson, Nevada Bar No. 5423  
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and

Annette W. Jarvis, Utah Bar No. 1649  
RAY QUINNEY & NEBEKER P.C.  
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P.O. Box 45385  
Salt Lake City, Utah 84145-0385

Attorneys for Debtors and Debtors-in-Possession

Ex "B"

**B. USACM Has Contractual and Statutory Obligations Not to Release the Funds Until the Rightful Ownership Is Established.**

Under the Loan Servicing Agreement that each Direct Lender entered into with USACM, USACM is required, among other things, to keep appropriate accounting records and ensure that the loan payments it collects as servicer are paid out only to the "proper parties" entitled to receive such payments. *See* Loan Servicing Agreement ¶ 2(c)(i). Under its new management, USACM is working hard to review, verify, and establish appropriate accounting records that will accurately reflect the proper amounts owed to or from each Direct Lender (including the Funds) with respect to each of the Serviced Loans, for the benefit of all Direct Lenders and Fund Members. Further, since the Petition Date, USACM under its new management has begun to aggressively collect past-due amounts owed on the Nonperforming Loans for the benefit of all Direct Lenders having an interest in one or more of the Nonperforming Loans, which includes both of the Funds and nearly all other Direct Lenders as well.

USACM also has a statutory duty under Nevada law respecting mortgage brokers to ensure that no payments it collects as mortgage servicer are released to any owners of fractional interests in a particular Serviced Loan unless the same amount "is also released to every other investor who owns a beneficial interest in the loan." Nev. Rev. Stat. § 645B.175(5). Thus, although some investors holding an interest in a particular loan may believe they are entitled to have the loan payments released immediately to them, it is in the best interests of other investors in that same loan, and is statutorily required, to allow USACM to hold all collected amounts for the limited period requested in the Motion so that the respective rights of all parties may be clarified before any disbursements are made. Under the statute, USACM is not authorized to release fractional loan payments to only those investors, if any, who may be invested solely in performing loans, because other investors in the same performing loans may have invested also in non-performing loans and thus cannot be paid until the analyses and reconciliations are completed.

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Ex "C"

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May 12, 2006

Matthew C. Zirzow, Esq.  
Thomas H. Fell, Esq.  
Gordon & Silver  
3960 Howard Hughes Pkwy. 9<sup>th</sup> Floor  
Las Vegas, NV 89109

Re: USA Capital Chapter 11 Bankruptcy  
BK-S-06-10725-LBR

Dear Mr. Zirzow and Mr. Fell:

As you probably already know, I represent several investors in the USA Capital bankruptcy. You are receiving this letter because you too represent one or more investors.

In my review of the facts concerning USA Capital and many years of experience as a Mortgage Broker and in Bankruptcies involving Mortgage Brokers, it does not appear that a reorganization will be successful in this bankruptcy. My basis for this belief is that it is not likely that the Debtor will find a lending institution to lend over \$100 Million when there are no assets to pledge nor is there goodwill. Essentially, all that the Debtor can offer to do is to broker new loans with the \$100,000,000.00. There is no reason why such an investor cannot use Consolidated Mortgage, Vestin Mortgage, One Cap Mortgage, or a dozen others. Even if the investor did make the loans, the cash-flow will not save USA Capital. Finally, the Court, if it wished to save Capital as a going concern must find "good faith". The owners of Capital cannot meet this burden. We all know the facts.

I believe the path each and every investor should take is that new Powers of Attorney be executed by each investor in favor of U.S. Loan Services. They took over Global's loans when Global went under and are well equipped to handle the loan servicing of the USA Capital loans. I have met with the President of U.S. Loan Services and he has agreed to charge a .75% servicing fee which will leave .25% which can be used to reimburse our clients for their attorney fees and costs. If there

Ex "D"

Page 2

Letter regarding USA Capital Chapter 11 Bankruptcy  
May 12, 2006

is any "surplus" after all reimbursements are made and our clients made whole, the remainder can be used to help those who would receive less than our clients.

It would seem better to have new fully executed powers of attorney for our standby use. It is better to have them and not need them than to need them and not have them.

If we work together, we can divide the mailing by alphabet so that no attorney has to send out more than 200 letters. It is probable that we should have one letter which is endorsed or signed by all investor's attorneys. Such a letter should be ready for signature and mailing as soon as we have all the Schedules filed - which date is fast approaching. Please contact me to discuss and let me know your feelings on this matter.

Very truly yours,



Robert C. LePome, Esq.

RCL/ss

cc: Franklin C. Adams, Esq.  
Kelly J. Brinkman, Esq.  
Candace Carlyon, Esq.  
Janet L. Chubb, Esq.  
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Ex<sup>r</sup> D<sup>11</sup>